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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,491	07/21/2003	Brian Roberts	10750-250	4988
1059	7590	09/11/2006	EXAMINER	
BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			LARSON, JUSTIN MATTHEW	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,491

Applicant(s)

ROBERTS, BRIAN

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,17-19,22-24 and 26-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,17-19,22-24 and 26-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 30 recites that the closure member reversibly closes an opening in the top of the pack. There is no antecedent basis for "reversibly closing" in the specification.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 28 recites the limitation "said at least one side cinch strap" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 30 and 36 are rejected under 35 U.S.C. 102(b) as anticipated by Fier (5,529,229 A).

Fier discloses a backpack, comprising a backpack body having a top (24), a bottom (26), a back-facing face and an away-facing face defined by at least a back-facing panel (20) and an away-facing panel (22), said backpack body defining at least one storage compartment, a closure member (30) closing an opening in the top, at least one shoulder strap (56/60) connected to said backpack body, wherein said at least one shoulder strap is adapted for mounting said backpack on a wearer, and at least one length-adjustable (via buckle 62) shoulder strap cinch strap (66/68), wherein the at least one shoulder strap cinch strap has a first end that is on the backpack body (72) and a second end that is on the at least one shoulder strap (60) and extends over the closure member (30), and wherein the at least one shoulder strap cinch strap comprises a quick release mechanism (62). Regarding the quick-release mechanism, Examiner is of the position that the end of the cinch strap can be removed or slid out of the sliding buckle shown as quickly as a user can pull it out. Note that the end of the cinch strap is not folded over so as to prevent it from being removed from the buckle.

Claim Rejections - 35 USC § 103

6. Claims 17-19, 22-24, 26-28, and 30-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ivarson et al. (US 6,474,524 B1) in view of Gausling et al. (US 6,164,509 A), and further in view of Godshaw (US 6,601,743 B2).

Regarding claims 17, 26, 30, 33, and 36, Ivarson et al. disclose a backpack comprising a backpack body, said backpack body having a back-facing face (16), said backpack body defining at least one storage compartment having a bottom (14), a closure member (32) and a top that is openable by the closure member, wherein said

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bottom is angled upwards in a direction away from said back-facing face, where said backpack is configured to maintain said bottom generally in said direction when said backpack contains a load therein; and at least one shoulder strap (38) connected to said backpack body, wherein said at least one shoulder strap is adapted for mounting said backpack on a wearer; and wherein said backpack body has an away-facing face (24) generally opposed to said back-facing face. Ivarson et al. fails to disclose a semi-rigid bottom board positioned at said bottom and at least one cinch strap connected between the backpack body and shoulder strap and extending across the closure member, the cinch strap including a separation clip that is separable whereby unobstructed access is provided to the storage compartment that is openable by the closure member when the separation clip is separated.

Regarding the semi-rigid bottom board, Gausling et al. teaches that a rigid bottom on a backpack body provides added support and ergonomic utility to the backpack (col. 7 lines 12-17). Gausling et al. further teaches that this rigidity along the bottom of the backpack body can be provided by inserting a rigid member such as a hard Nylon sheet inside a pocket formed by the bottom panel of the backpack (col. 7 lines 34-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide rigidity along the bottom surface of the Ivarson et al. backpack by implementing a semi-rigid bottom board along the bottom surface, as taught by Gausling et al., in order to provide additional support and ergonomic utility to the backpack.

Regarding the cinch strap extending over the closure member, Gausling et al. teach support straps (600) extending from a backpack's shoulder strap over the top of the backpack to an away-facing face of the backpack, the support strap functioning to maintain the shape of the bag and offer further support for the load being carried (col. 9 lines 5-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide support straps on top of the backpack of Ivarson et al., as taught by Gausling et al., in order to help maintain the shape of the bag and to provide more support for the load being carried in the backpack. These straps, when implemented on the backpack of Ivarson et al. would certainly extend across the closure (32) of Ivarson et al.

Regarding the cinch strap having a separation clip, the support straps that have been added to the Ivarson et al. backpack are not separable and inhibit a user's ability to access the interior of the backpack through the zippered closure (32). Godshaw, however, also discloses a pack and, like Gausling et al., teaches that support straps (50,52) extend over the top of the pack, the support straps serving to maintain the shape of the bag and to provide more support the load being carried in the pack (col. 3 lines 6-13) and the support straps further including separation clips (60) that allow a user to adjust or detach the support straps and access the top panel opening (22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include separation clips on the support straps of the modified Ivarson et al. backpack, as taught by Godshaw, so that a user could have easier access to the opening (32) of the backpack. The addition of these separation clips effectively

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transforms the support straps of the modified Ivarson et al. backpack into adjustable cinch straps.

Regarding claims 18, 23, and 31, Ivarson et al. discloses that the back panel (16) may be reinforced with a layer of material in order to enhance rigidity (col. 2 lines 56-59). Gausling et al., as previously mentioned, teaches that a panel of a backpack may be given rigidity by providing a semi-rigid board on the panel. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to position a semi-rigid back board on the back-facing panel of the modified Ivarson et al. backpack in order to enhance the backpack's rigidity for support purposes.

Regarding claims 19 and 32, Ivarson et al. discloses that the back-facing panel may include a cushion material for increased comfort to the user (col. 2 lines 59-61).

Regarding claim 22, the cinch straps of the modified Ivarson et al. backpack have one end attached to the away-facing face of the backpack and the other end attached to the shoulder straps at a spaced distance from the back-facing face of the backpack, as taught by Gausling et al. The cinch straps are also adjustable, as allowed by the separation clips taught by Godshaw. The remaining limitations in the claim are satisfied by the modified Ivarson et al. backpack as applied to claim 17 above.

Regarding claim 24, the cinch straps of the modified Ivarson et al. backpack as applied to claim 22 above satisfy the claim's limitations.

Regarding claim 27, the cinch straps of the modified Ivarson et al. backpack cinch the away- and back-facing faces of the backpack towards each other.

Regarding claims 28, 34, and 35, the modified Ivarson et al. backpack as applied above does not yet include a side cinch strap for cinching the away- and back-facing faces of the backpack towards one another. Gausling et al., however, also teaches that in addition to the top support straps, downwardly extending side cinch straps (400) may be provided for adjusting the load distribution of the backpack by cinching the away- and back-facing faces of the backpack towards one another (col. 6 line 65 – col. 7 line 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to further include downwardly extending side cinch straps on the modified Ivarson et al. backpack, as taught by Gausling et al., in order to further adjust the load distribution of the backpack.

7. Claims 3 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph #6 above in view of Shook (US 5,911,348).

Regarding claim 29, the modified Ivarson et al. backpack includes the claimed features except for the back-facing face having at least one air channel defined thereon, wherein said air channel has at least one opening at the periphery of the said back-facing face.

While the modified Ivarson et al. backpack includes padding on the back-facing panel, Shook teaches that it is known in the art to use padding that provides a series of air channels on the back-facing panel between the backpack body and the user's back in order to provide ventilation and comfort along a user's back. It would have been obvious to one having ordinary skill in the art at the time the invention was made to also use padding that provided at least one air-channel on the modified Ivarson et al.

backpack, as taught by Shook, in order to provide ventilation along a user's back and help to prevent excessive perspiration and possibly discomfort.

Regarding claim 3, at least one, if not all, of the air channels taught by Shook can be considered to face the spine of a wearer, as they face the user's back in general and the spine is located on the back, and all are certainly sufficiently deep so as to avoid contact with the spine of said wearer when in use, effectively satisfying the limitations of the claim.

Response to Arguments

8. Applicant's arguments with respect to claims 17-19, 22-24, and 26-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

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system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML
8/22/06


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